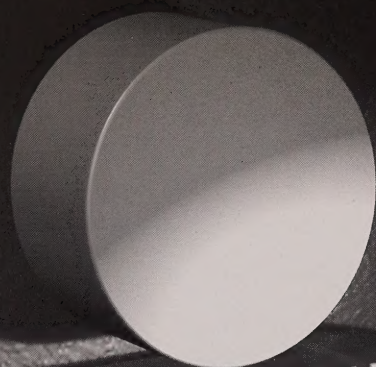


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1994

INFORMATION
AND PRIVACY
COMMISSIONER
ONTARIO

ANNUAL REPORT

THE PURPOSES OF THE ACTS

The purposes of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are:

- a) To provide a right of access to information under the control of government organizations in accordance with the following principles
 - information should be available to the public;
 - exemptions to the right of access should be limited and specific; and
 - decisions on the disclosure of government information may be reviewed by the Information and Privacy Commissioner.
- b) To protect personal information held by government organizations and to provide individuals with a right of access to their own personal information.



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The graphics and text pages were created and desktop published by staff at the Office of the Information and Privacy Commissioner.

Ce rapport annuel est également disponible en français.

Upon request, this publication will be made available on audio tape.



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

Speaker of the Legislative Assembly

I have the honour to present my annual report to the Legislative Assembly. This report covers the period from January 1, 1994 to December 31, 1994.

Yours sincerely,

Tom Wright
Commissioner



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY/TDD: 416-325-7539

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COMMISSIONER'S MESSAGE

It was in 1988 that Ontario's *Freedom of Information and Protection of Privacy Act*, which applies to provincial government organizations, took effect — followed by the *Municipal Freedom of Information and Protection of Privacy Act*, covering local government organizations, in 1991. Since those dates, Ontario has built up substantial experience with the access and privacy system — a record that has now been reviewed by the Standing Committee on the Legislative Assembly in two stages, as required by law.

In December 1994, the Standing Committee tabled its report on the municipal *Act*, which complements its 1991 report on the provincial statute. Both reports contain numerous recommendations to amend the legislation. With these two in-depth examinations completed, the stage is now set for updating the *Acts* developed in the mid-'80s.

CHANGING EXPECTATIONS

Information technology and public expectations have changed significantly since the *Acts* were passed. While the information highway was then on the drawing board, it is now being constructed with remarkable speed — bringing enormous ramifications for both access to information and protection of privacy.

The information highway promises unprecedented expansion of access to information of all types — as long as we avoid financial “toll booths” that limit access to those who can afford to pay. The highway also holds promises of a golden age of privacy, if we insist on harnessing the power of technology — not only to collect, compile and disseminate personal information — but also to protect it.

Freedom of information is about open government and the democratic imperative to hold government accountable to the people. Privacy is about the right of individuals to control how, when and if information about themselves is communicated to others.

If these deeply rooted values are to continue to flourish in the mid-'90s and beyond, Ontario must revise its access and privacy legislation in light of experience with the existing system and in response to a changing environment. I urge the provincial government to bring forward amendments at the earliest opportunity.

EXTENSION OF ACTS URGED

In a submission to the Standing Committee, the Office of the Information and Privacy Commissioner (IPC) proposed a series of changes to the existing legislation.

As a top priority, we called on the Ontario government to extend the access and privacy system to a wider range of public organizations — specifically, hospitals, universities, social service agencies and professional governing bodies. Access to their general records would make these important public bodies more accountable. At the same time, they often hold sensitive personal information that requires legislated privacy protection.

BETTER CUSTOMER SERVICE

My office is a strong advocate of routine disclosure and active dissemination of government information — practices which represent major advances in customer service. In our submission we suggested an amendment to encourage government organizations to adopt these customer-focused alternatives to the formal access process.

Under routine disclosure, government organizations pre-classify specific types of records for automatic release upon request. The request could be either inside or outside the formal system. Active dissemination goes a step further. It means anticipating customer needs by releasing useful general records without waiting to be asked.

Routine disclosure and active dissemination are also cost-effective strategies for government

organizations seeking to meet rising public demand for information in the face of limited resources. In most cases it will prove less expensive and labour intensive to release items freely to the public, than to search for specific records in response to ad hoc requests.

Another IPC recommendation was to rewrite the *Acts* in plain language. This would improve customer service by making the system more user-friendly, easier to understand and more efficient for all concerned.

PROACTIVE APPROACH

We called for several amendments to deal with the shift from paper records to computerized information systems. In the past, society has tended to wait for the problems linked with new technology to become visible — and then practice expensive and usually not entirely effective damage control. Instead, access and privacy concepts should be built into emerging systems as they are being designed.

The amendments urged by the IPC would require government organizations to take such a proactive approach. It is crucial to guarantee that new technologies themselves do not pose barriers to access or threats to privacy.

ELECTRONIC ACCESS

For example, we proposed a regulation to ensure that, in designing electronic systems, information retrieval methods are selected with great care in order to maximize accessibility. Government organizations developing new systems should consider such factors as what information should be accessible, to whom, under what conditions and in what format. Freedom of information could become an empty phrase if access depends on technology that users cannot afford or cannot easily learn to operate.

Furthermore, government information systems should include the capability to sever records electronically. This feature would help keep access fees low by making it unnecessary to produce hard copy and then manually remove exempt information.

PERSONAL INFORMATION IN PUBLIC REGISTERS

I believe society has every right to demand that proponents of new technologies find ways to make them compatible with privacy values. Through such measures as encryption techniques, technology itself can provide solutions not only to prevent the demise of privacy, which some pessimists are predicting, but to safeguard privacy more effectively than ever before.

An example of a privacy challenge in the electronic age involves public databanks containing personal information — such as assessment rolls, the personal property security registration database, and land registry system. Since the privacy rules under the *Acts* do not apply to public databases, the personal information they hold is unprotected.

However, in the past the paper medium on which records were stored provided a built-in check. But as these registers are transferred to electronic media, it grows exponentially easier to retrieve and manipulate the personal data they contain, and to use it for purposes other than those originally intended. For example, to find out who owned a piece of property, you once had to visit the registry office where the record was located and search the paper records. Now in many cases all it takes is pushing a few computer keys.

I believe that the whole question of what personal information truly belongs on the public record needs to be rethought. As a minimum, we should place new privacy controls on electronic public databanks storing personal information, along the lines of the Public Register Privacy Principles enacted in New Zealand. The IPC submission to the Standing Committee recommended amending Ontario's legislation to implement such controls.

Under the New Zealand approach, personal information in a public register can be accessed only through searches consistent with the way in which the register is organized. That is, the personal information is not to be resorted or combined with personal data from another public register. Furthermore, the personal information may not be made available electronically, except to members of the public who wish to search the register.

By adopting such principles, Ontario could ensure that new technology, in easing access to public information, also serves to reinforce rather than undermine our traditional privacy values.

THE END OF HISTORY?

Let us remember that freedom of information is not only about access today, but tomorrow. Increasingly, records of government activity are stored in computerized systems that have a short life span. Not only are the electronic storage media themselves more fragile than paper, but application software, operating systems and hardware are continually being superseded by new products. These realities pose unprecedented challenges for archivists, historians and everyone interested in conserving our past.

Can we hope to preserve indefinitely the array of computer programs that generate digital documents, as well as the system software to run those programs? And if we can, what about hardware? For how long will we be able to maintain and repair the equipment needed to run antiquated systems and applications? Are emulator programs that mimic the performance of hardware a potential solution? And who is responsible for answering these questions?

Unless we begin taking action on these issues soon, the historical records we pass on to the next generation will for all practical purposes be lost. It would be the ultimate irony if the "information age" turned out to be one of the most poorly documented periods in human history, simply because the chronicle of our own era became irretrievable.

ACCESS AND PRIVACY BECOMING INGRAINED

While the IPC submission to the Standing Committee focused on opportunities for positive change, we emphasized that the basic framework of the legislation is structurally sound. Substantial

progress has been achieved under the *Acts*. To a significant extent, access to information and protection of privacy have become an integral part of day-to-day operations for both provincial and municipal government organizations.

This trend is reflected in combined provincial and municipal statistics showing that in 1994 about half of access requests led to the release of all information sought, while another quarter led to partial disclosure. Requests themselves increased 15 per cent over 1993 to reach an all-time high of 22 750.

PRODUCTIVITY INCREASES

Nevertheless, I believe the existence of the IPC as an independent body is a pivotal feature of the system that sustains access and privacy rights. I want to take this occasion to acknowledge the Legislative Assembly's continued support for the mandate and activities of this office.

We at the IPC in turn recognize our responsibility to deliver value for the public funds entrusted to us. In 1994, the total number of appeals filed from denial of access to information rose sharply — by 29 per cent over the previous year. In response to the increased volume, we closed four per cent more appeals and issued 11 per cent more orders.

In addition, we have been steadily reducing the length of time it takes to process appeals. The average time to close an appeal continued to decline, falling to 3.6 months this year, compared with 5.4 months last year and 6.5 months the year before. Eighty-two per cent of appeals were completed in five months in 1994, compared with 66 per cent in 1993 and 56 per cent in 1992. We are on target toward the goal outlined in our strategic plan of processing 95 per cent of appeals within four months by 1996.

On the privacy side, in 1994 we completed more than 200 formal investigations and resolved almost 300 oral complaints. The average time to complete an investigation this year and last dropped to below two months, compared with nearly six months in 1992.

COMMITMENT THE KEY

We have a solid strategic plan in place to continue to improve our performance. But more important than a plan is the people who make it work. I extend my thanks to each staff member at the IPC whose dedication and creativity have been the true source of all we have achieved in the past year.

I also want to recognize the skill and commitment of the Information and Privacy Coordinators in government organizations, who are on the front lines making access and privacy happen provincially and locally.

Finally, staff of Management Board Secretariat play an invaluable role in providing training and expert advice to government organizations on the day-to-day application of the legislation. This centralized resource encourages a consistent approach across government and contributes immensely to the effective operation of the access and privacy system.

We at the IPC look forward to the continued co-operation of our colleagues in provincial and municipal organizations to promote open government and to champion privacy on behalf of the people of Ontario.

Tom Wright
Information and Privacy Commissioner

THE IPC: MANDATE AND ROLES

The Information and Privacy Commissioner is appointed under the *Freedom of Information and Protection of Privacy Act* (the provincial *Act*) and the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal *Act*). Together, these two acts establish a system for guaranteeing public access to government information, with limited exemptions; and for protecting personal information held by government organizations at both the provincial and municipal levels.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions, as well as to colleges of applied arts and technology and district health councils. The municipal *Act* covers local government organizations, such as municipalities; public library, health and school boards; and public utilities, transit and police commissions.

Ontario combines the right to access with the right to privacy in a single legislative system. Access refers mainly to information about what government organizations do, as reflected in administrative, operational and policy-related records. Access to such general records can be equated with open government.

Privacy, on the other hand, concerns information about identifiable individuals. The *Acts* establish rules about how government organizations may collect and use personal data. In addition, individuals have the right to see their own personal information held by government organizations and are entitled to request correction of this information.

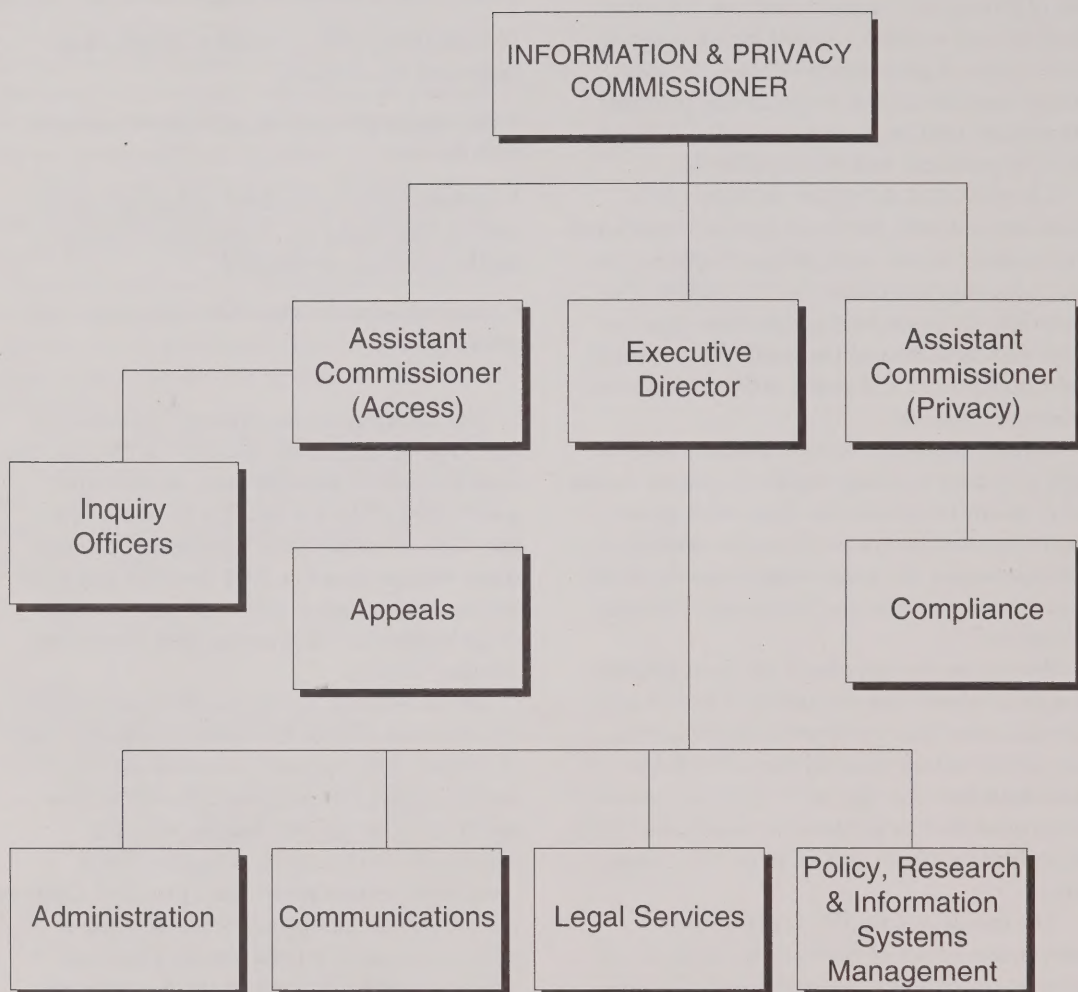
The mandate of the IPC is to provide an independent review of government decisions and practices concerning access and privacy. To safe-

guard the rights established under the *Acts*, the IPC:

- resolves appeals when government organizations refuse access to requested information;
- investigates privacy complaints about government-held information;
- ensures that government organizations comply with the *Acts*;
- conducts research on access and privacy issues and provides advice on proposed government legislation and programs; and
- educates the public about Ontario's access and privacy laws.

The Information and Privacy Commissioner reports to the Legislative Assembly of Ontario. The Commissioner is therefore independent of the government of the day and in a position to carry out duties even-handedly. The present Commissioner was appointed in 1991 for a five-year term on the recommendation of an all-party committee of the legislature, following an open, competitive selection process.

In line with the legislation, the Commissioner has delegated some of his decision-making powers to his staff. The Assistant Commissioner (Access) and six Inquiry Officers have authority to issue orders resolving appeals. And the Assistant Commissioner (Privacy) investigates privacy complaints, reviews government practices, approves applications for indirect collection of personal information and comments on any computer matches proposed by the provincial government.



INFORMATION REQUESTS ACROSS GOVERNMENT: 1994 TOTALS

Government organizations, both provincial and municipal, file a yearly report with the IPC on their activities under the *Acts*. These reports include data on the requests received for general records, personal information and correction of information, as well as on the organization's response to these requests. By compiling these reports, the IPC gains a useful picture of compliance with the *Acts*.

RECORD LEVELS

In all, provincial government organizations received 12 512 requests for access to information in 1994 — the highest annual total since the provincial *Act* took effect. Municipal government organizations reporting for 1994 received a total of 10 238 requests, likewise the highest volume ever under the municipal *Act*.

Requests for access to general records outnumbered requests for access to personal information by about three to one, in both provincial and municipal organizations. This was consistent with previous trends: in every year under either *Act*, requests for general records have exceeded those for personal information.

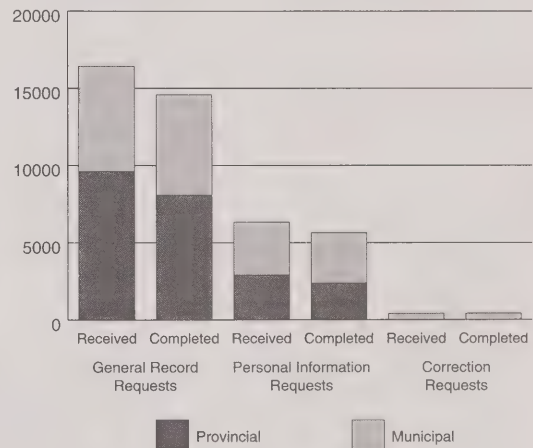
Also in line with previous trends, both provincial and municipal organizations answered the vast majority of requests received in 1994 by the end of the year. Only nine per cent of requests were carried over to 1995.

REQUEST LEADERS

The Ministry of Finance again reported the highest number of requests under the provincial *Act*, followed by the Ministry of the Solicitor General and Correctional Services, the Ministry of Community and Social Services and the Ministry of Labour. Together, these four Ministries accounted for 50 per cent of all provincial requests.

Under the municipal *Act*, municipal corporations (including municipal governments) received 44 per cent of total requests. Police services boards were next with 36 per cent, followed by public utilities with nine per cent and school boards with five per cent.

Requests Received and Completed – 1994



PROMPT RESPONSES

Provincial government organizations have replied to the majority of requests within 30 days in all seven years of operation of the *Act*. Fifty-one per cent of provincial requests were answered within 30 days in 1994 — the same proportion as in 1993. Eighty-two per cent of 1994 requests were completed within 60 days, while only five per cent took more than 120 days.

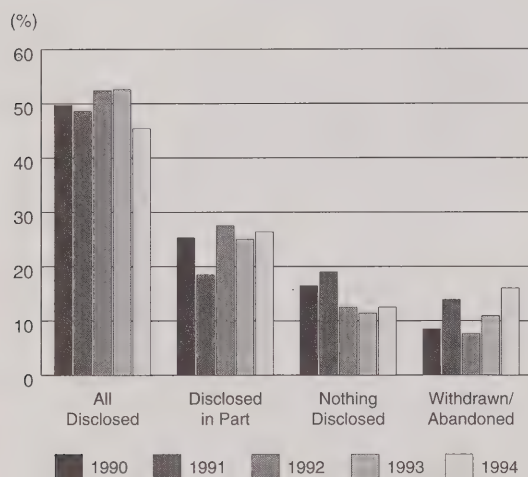
Municipal government organizations responded to a sizable majority of requests — 90 per cent — within 30 days in 1994. This was the fourth consecutive year at virtually the same high level. Ninety-six per cent of municipal requests in 1994 were answered within 60 days, and only one per cent took more than 120 days to complete.

FAVOURABLE OUTCOMES

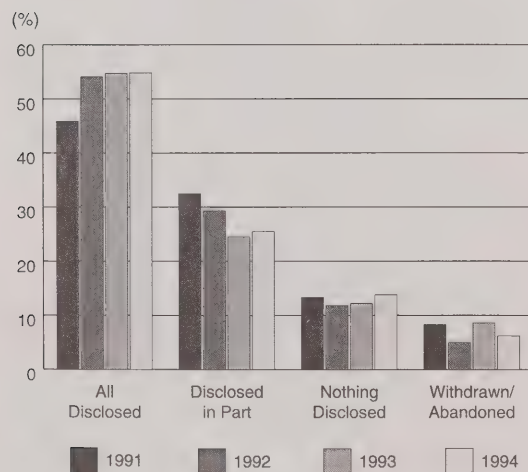
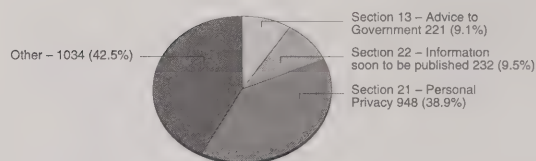
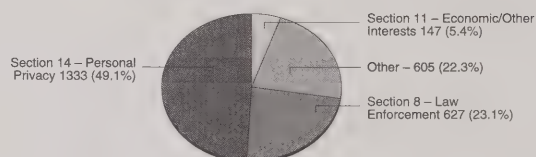
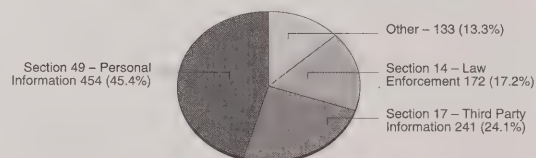
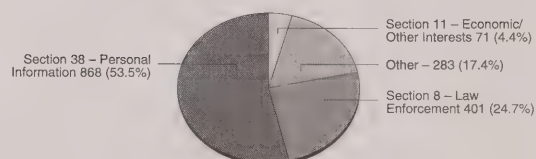
As to outcomes, 45 per cent of provincial requests completed in 1994 led to the release of all information sought. For municipal requests, this climbed to 55 per cent leading to full disclosure. In only about one in eight cases was no information released.

Under the exemption provisions of the *Acts*, government organizations can, and in some cases must, refuse to disclose requested information. Following the pattern of the past several years, in 1994 both provincial and municipal organizations cited personal privacy and personal information exemptions most frequently.

Outcome of Provincial Requests – 1990-94



Outcome of Municipal Requests – 1991-94

Provincial Exemptions Used
General Records – 1994Municipal Exemptions Used
General Records – 1994Provincial Exemptions Used
Personal Information – 1994Municipal Exemptions Used
Personal Information – 1994

CORRECTIONS SOUGHT

Under the legislation individuals have the right to request correction of their personal information held by government. This year provincial organizations received 12 correction requests and refused nine of them. Municipal organizations received 397 correction requests — more than four times as many as last year — and refused only 17 of them. The tendency for provincial organizations to refuse correction requests and municipal organizations to grant them has been observed in prior years.

When correction is refused, the requester may attach a statement of disagreement to the record, outlining why the information is felt to be incorrect. This year seven provincial and 21 municipal statements of disagreement were filed.

ACCESS FEES

The legislation permits government organizations to charge fees for providing access to information under certain conditions. A fee estimate must be provided before filling the request where the expected charge is over \$25. Organizations have discretion to waive payment where it seems fair and equitable to do so after weighing several specific factors. In addition, people cannot be required to pay fees for access to their own personal information.

As in earlier years, provincial organizations most often cited reproduction of material as the reason for collecting fees in 1994. Reproduction costs were mentioned in 36 per cent of cases where fees were collected, followed by preparation costs in 34 per cent and shipping costs in 27 per cent. Municipal organizations cited reproduction costs in 41 per cent of cases where fees were collected, preparation in 20 per cent and shipping in 19 per cent.

**Cases in Which Fees were Estimated
General Records – 1994**

	Provincial		Municipal	
Collected in Full	88.7%	2642	70.6%	2167
Waived in Part	10.9%	325	0.5%	14
Waived in Full	0.4%	13	28.9%	887
Total Fees Collected (dollars)		\$154,955.05		\$69,617.45
Total Fees Waived (dollars)		\$18,643.84		\$11,253.78

If people who request information are not satisfied with a government organization's response, they can appeal to the IPC. Appeals can be filed concerning a refusal to grant access to general records or personal information, a refusal to correct personal information, the imposition of fees, or other aspects of the handling of a request.

When an appeal is filed, the IPC makes a concerted effort to mediate the case by working closely with the parties to find common ground. Mediation is successful in the majority of appeals. If the issues are not settled within a reasonable time period, the IPC conducts an inquiry and issues a binding order to resolve the case.

Productivity Continues Upswing

The efficient processing of appeals ranks as one of the IPC's top priorities. The IPC resolved four per cent more appeals this year than last.

We also processed appeals faster. In 1994, 82 per cent of appeals were closed within five months of receipt, compared with 66 per cent closed within five months in 1993 and 56 per cent in 1992. The average time to close an appeal continued to decline, falling to 3.6 months this year from 5.4 months last year and 6.5 months the year before.¹

During the year the IPC reorganized the appeals staff to raise the number of decision-makers with authority to decide appeals from six to seven. This increased capacity to conduct inquiries and produce orders expeditiously. Partially due to this change, we issued 11 per cent more orders in 1994 than in 1993.

INNOVATION PAYS OFF

1994 was the second year of the Innovation Pilot Project, designed to simplify appeal procedures and

improve customer service. Fourteen municipal and provincial government organizations participated in this initiative, with a special IPC Innovation Team handling all appeals involving these institutions.

The project sets more structured timeframes for various stages in the appeal process. For example, an inquiry automatically commences if an appeal has not been resolved though mediation within two and a half months. This deadline often helps focus mediation efforts, which of course may continue after a notice of inquiry has been issued. The project has also experimented with oral representations as an alternative to written representations.

Using these new procedures, the Innovation Team resolved 92 per cent of its cases within five months, and 82 per cent within four months. The project results indicate that the IPC's strategic objective of processing 95 per cent of appeals within four months is within reach, and that a more structured and predictable approach furthers this objective.

Appeals: Statistical Overview

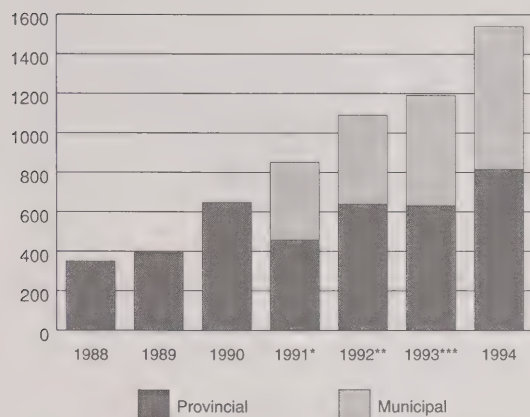
In all, 1540 appeals² were made to the IPC in 1994 — up 29 per cent from the previous year. Slightly more than half the total were filed under the provincial *Act*. Since 1993, provincial appeals have increased 29 per cent, and municipal appeals 30 per cent.

Eighty-five per cent of provincial appeals concerned ministries rather than agencies. The largest share of municipal appeals — 43 per cent — involved municipal corporations, followed by police services boards and boards of education. These patterns were similar to those observed in prior years.

¹ The corresponding median time to close an appeal was 2.5 months in 1994, 3.8 months in 1993 and 4.7 months in 1992.

² The statistics cited in this annual report refer to active appeals only, unless otherwise indicated. In 1991, the IPC established a policy limiting the number of appeals, from any one source, worked on at one time. This policy was necessary to deal with bulk use of the appeal process. Active appeals are actively worked on by the IPC during the year. The remaining appeals are classified as inactive.

Appeals Received – 1988-94



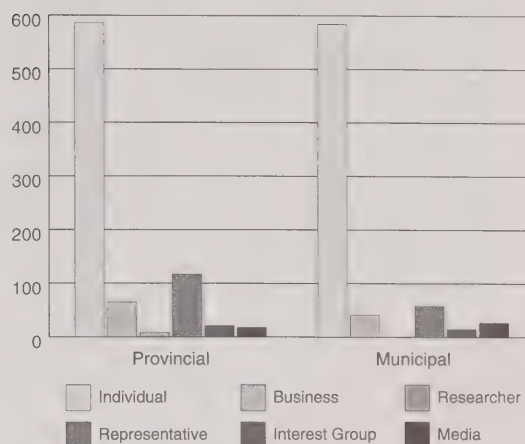
* An additional 741 inactive appeals were received during 1991

** An additional 129 inactive appeals were received during 1992

*** An additional 28 inactive appeals were received during 1993

Although the *Acts* do not require people who file appeals to provide information about themselves, the IPC tries to identify categories of appellants. This is a subjective exercise and the resulting information should be viewed accordingly. As in previous years, the figures indicate that the prime user of the appeal system is the general public, rather than businesses, news media or other kinds of organizations.

Types of Requesters Involved in Appeals – 1994



The IPC closed a total of 1471 appeals during 1994 — a four per cent increase over 1993. Fifty-one per cent of the appeals resolved this year were filed under the provincial *Act*, while the remaining 49 per cent fell under the municipal *Act*. We closed 13 per cent more municipal appeals this year than last, while provincial appeals closed were down by two per cent.

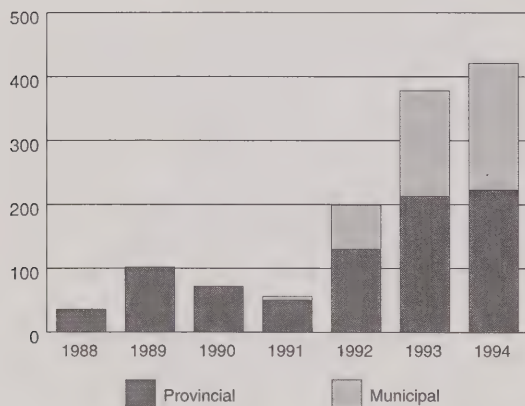
Appeals Received by Issue – 1994

Types of Appeals	Provincial		Municipal		Total	
Request for general records	219	26.9%	228	31.5%	447	29.0%
Request for personal information	89	10.9%	48	6.6%	137	8.9%
Request for general records/ personal information	426	52.2%	353	48.7%	779	50.6%
Request for correction of personal information	4	0.5%	5	0.7%	9	0.6%
Time extension	6	0.7%	16	2.2%	22	1.4%
Fees	42	5.2%	64	8.8%	106	6.9%
Third Party	29	3.6%	11	1.5%	40	2.6%
Total	815	100.0%	725	100.0%	1540	100.0%

Of the cases closed this year, the IPC resolved 32 per cent by issuing an order, compared with 30 per cent by order in 1993. Orders were almost equally frequent in provincial and municipal appeals, with 33 per cent of provincial and 31 per cent of municipal appeals closed by order this year.

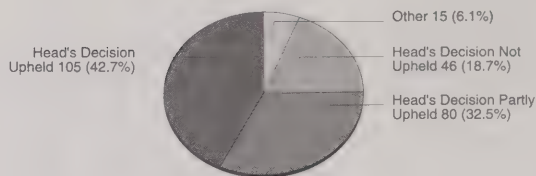
In 1994, the IPC issued a total of 421 orders — an 11 per cent increase from 1993. (The number of orders is less than the number of appeals closed by order, since an order may deal with more than one appeal.) Orders were quite evenly divided between provincial and municipal organizations, with 53 per cent of the 1994 orders concerning provincial organizations and the remaining 47 per cent involving municipal organizations.

Orders Issued – 1988-94

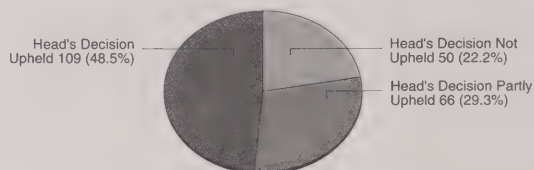


A mediated settlement occurred in 59 per cent of all appeals resolved this year, an increase from 54 per cent last year. In appeals closed by order, the decision of the head of the government organization involved was upheld in 46 per cent of all cases, the head's decision was partly upheld in 31 per cent of all cases and in 20 per cent of the cases the head's decision was not upheld. In the remaining three per cent of cases, some other action was ordered (e.g., conduct a search, reconsider a decision etc.)

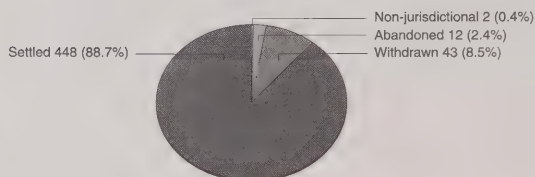
Outcome of Appeals Closed by Order
Provincial – 1994



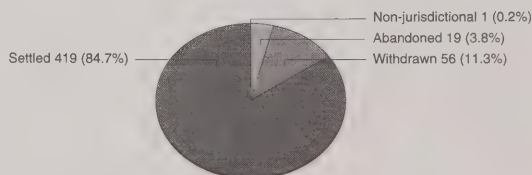
Outcome of Appeals Closed by Order
Municipal – 1994



Outcome of Appeals Closed Other Than by Order
Provincial – 1994



Outcome of Appeals Closed Other Than by Order
Municipal – 1994



Highlights of IPC Orders

In 1994, the orders issued by the IPC dealt with a range of novel and significant issues. A few key orders are summarized below.

PRODUCTION OF CLINICAL RECORDS

A requester asked the Ministry of Health for access to records containing the personal information of a patient detained in a psychiatric hospital as a result of having been found not guilty by reason of insanity, on the charge of attempted murder. The Ministry claimed the records in question were clinical records and, hence, not subject to the *Act*.

The requester appealed. The Ministry was asked to deliver a copy of the records in dispute to the IPC, but did not do so. The Ministry argued that since the records were clinical records, they were not accessible under the *Act* and therefore did not need to be supplied.

The IPC ordered the Ministry to produce all records responding to the request. We found that while the Legislature clearly intended clinical records to fall outside the purview of the *Act*, it did not intend to have the Ministry itself decide the threshold issue of whether or not records were clinical records. (Order P-623³)

ACCESS TO LEGAL ACCOUNTS

A farming couple who had obtained a bank loan guaranteed by the Ministry of Agriculture and Food were sued for non-payment, and settled out of court. The couple then filed a request under the *Act* for information about the costs incurred to collect the money owed. The Ministry denied access to those records containing legal accounts, claiming that they were exempt from disclosure because of solicitor-client privilege. The couple appealed.

Based on an earlier order (M-213), the IPC concluded that in practice a legal account will fall

within solicitor-client privilege only when it discloses the subject the law firm was asked to examine, the strategy used to address the issues raised, the particulars of any legal advice provided or the outcome of the investigation.

The IPC ordered the release of the legal accounts, except for portions of the narratives which appeared in some of the records. The implication of this case is that legal accounts will not ordinarily fall within solicitor-client privilege for purposes of the *Act*, and therefore the costs of the legal services to which such accounts refer will be subject to disclosure. (Order P-624)

AUDIT REPORT ON RESIDENTIAL FACILITY

A newspaper reporter sought access to an audit report prepared by the Ministry of the Solicitor General and Correctional Services on the operations of a residence for young offenders. The facility was publicly funded through the Ministry. The director of the residence objected to the release of the report, claiming that its contents in their entirety constituted his personal information. The reporter appealed.

The IPC addressed two issues. First, we found that the records that contained information about an evaluation of an employee's performance or an investigation of an employee's conduct constituted personal information.

Second, we applied the section of the *Act* which balances privacy interests against the need for public scrutiny of government activities. The IPC concluded that the release of the information would be desirable to subject the monitoring and audit functions of the Ministry to public scrutiny. The question of a government organization's ability to oversee the programs it administers is an important public policy issue.

In balancing the desirability of disclosure with the privacy of sensitive personal information, the IPC found that the scales in this case tipped in favour of disclosure. (Order P-721)

³ This order was under judicial review at the time of writing.

DRAFT REGULATION RELEASED SELECTIVELY

The Ministry of Finance circulated a draft version of a regulation being developed under the *Pension Benefits Act* to 12 interested stakeholders in the pension and actuarial community. The purpose of the regulation was to allow some large pension funds to opt out of certain funding obligations. The stakeholders provided written comments that were taken into account in preparing the final version of the regulation.

When a requester sought access to the draft version, the Ministry refused, applying the Cabinet records exemption. On appeal, the IPC referred to the section of the *Act* that provides for release of Cabinet records if Cabinet consents. We felt that in the circumstances of this case, in which the records had already been circulated on a selective basis, the Ministry should seek Cabinet approval to disclose the draft regulation to the requester. The Ministry sought and received Cabinet consent and released the records. (Order P-771⁴)

FEE WAIVER FOR PATIENT COMPLAINT RECORDS

A requester representing a group of psychiatric patients asked the Ministry of Health for copies of records concerning complaints by current or former patients of alleged physical or sexual abuse by staff of the Queen Street Mental Health Centre. The Ministry provided a fee estimate of \$147 and refused to waive it.

On appeal, the requester indicated that the patients' group planned to publish the information, and that this would benefit public health or safety. Hence this situation met the criteria for a fee waiver under the *Act*.

The IPC affirmed that the care of institutionalized psychiatric patients is a public responsibility, and agreed that dissemination of the information would yield a public benefit by disclosing a public health and safety concern. The Ministry was ordered to waive the fee. (Order P-754)

CLIENT RECORDS HELD BY LAW FIRM

A requester sought records from a village government that were in the custody of its external solicitor. The village claimed that since it did not have custody or control of the records, the *Act* did not apply. The solicitor stated that the law firm had an established policy that all client records were the property of the firm.

The IPC ruled that it was the law, not the firm's policy, that determined ownership of the records. Since the village and the solicitor had failed to provide the records or a description to the IPC, the IPC ordered the village to review the records to determine which ones were under its control, according to established legal criteria set out in the order. Once this had been done, the village would be required to make an access decision. (Order M-371)

Mediation Success Stories

The majority of appeals are settled through mediation. Here are a few examples of successful mediation efforts in 1994.

WITNESSES CONSENT TO BE CONTACTED

The parents of an individual who had died suddenly requested a copy of the police report on the circumstances of his death. The police force, while sympathetic to the requesters, denied access since the report had been compiled as part of a law enforcement investigation.

An appeal was filed, and during mediation the IPC Appeals Officer proposed asking the witnesses to the incident if they would allow their names and phone numbers to be given to the requesters. The requesters could then speak directly to the witnesses to their son's death. The police were receptive to the idea, and when contacted, two of the three witnesses consented. As a result, the case was settled.

⁴ This order was under judicial review at the time of writing.

MEMBERSHIP LIST REVISED

An association of individuals who leased land within a provincial park requested the Ministry of Natural Resources to verify its membership list. While the Ministry had agreed to such requests in the past, on this occasion it refused on the ground that the information sought was personal information.

During mediation the IPC suggested including a release form in the association's newsletter. By completing the form, each member could authorize the Ministry to disclose his or her personal information to the association. This authorization would enable the Ministry to update the membership list in the future. On this basis the appeal was settled.

Judicial Review Update

Orders issued by the Information and Privacy Commissioner may be reviewed by the courts on jurisdictional grounds, as may the decisions of other administrative tribunals.

At the end of 1993, 33 applications for judicial review were pending. During 1994, 25 new applications were filed and 27 cases were resolved. This left 31 judicial review applications outstanding at year end. Of the cases still before the courts, 25 were launched by government organizations, five by affected parties and one by the IPC.

Outstanding Judicial Reviews – 1994

Launched by	
IPC	1
Affected Parties	5
Institutions	25
Total	31

FUNDING FOR MUNICIPAL CORRUPTION SQUAD

In one case decided this year, a newspaper reporter sought records concerning the Ministry of the Attorney General's funding of Project 80, a municipal corruption squad with officers from the Metropolitan Toronto and York Region police forces and the Ontario Provincial Police. The Ministry refused to disclose the records on the basis of the law enforcement exemption. The reporter appealed.

On appeal, the IPC found that some portions of the records were not relevant to the request, and so would not be considered in the appeal. The IPC went on to order the Ministry to release certain portions of the records, while upholding the Ministry's decision on the balance of the information. Both the Ministry and the appellant applied for judicial review.

The Divisional Court dismissed the Ministry's application⁵, finding that the IPC's decision on the law enforcement exemption was reasonable in light of the material before it. The Court pointed out that the request was for "financial information only" and that the Ministry had offered very limited representations and evidence to support the exemption.

Contrary to the appellant's position, the Court found that the IPC must have jurisdiction to consider whether information is relevant to a request. However, the Court also ruled that under the *Act* the IPC is required to grant the parties to the appeal the opportunity to make recommendations on the issue of relevancy, an opportunity that had not been afforded in this case.

Accordingly, the portion of the order dealing with relevancy was sent back to the IPC to be redetermined with the benefit of representations from the parties. This was pending at the end of 1994.

⁵ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197, 25 Admin. L.R. (2d) 123 (Div. Ct.)

Both the Ministry and the appellant applied to the Court of Appeal for leave to appeal the decision. Both applications were denied.

MUNICIPAL OFFICIAL'S EMPLOYMENT CONTRACT

Another case this year concerned the employment contract of a senior municipal official. The municipality denied access on the basis of the personal privacy exemption.

On appeal, the IPC found that some portions of the record did not constitute personal information and therefore should be disclosed. Furthermore, the IPC found that most of the remainder of the record, though constituting personal information, did not fit within the personal privacy exemption and also should be disclosed. However, the IPC did uphold the municipality's decision not to release certain information about the affected person's salary. The municipality sought judicial review, challenging both the fairness of the IPC's procedures and the substance of the decision.

The Divisional Court found⁶ that the process in this case was not unfair. In reviewing the appeal process, the Court recognized the IPC's obligation to maintain confidentiality. Given this obligation, the Court stated that, subject to an overriding concern for procedural fairness, it should accord "curial deference" to the IPC's procedures. The Court also held that the IPC had acted reasonably in interpreting and applying the *Act*. Accordingly, the application was dismissed.

⁶ *Gravenhurst (Town) v. Ontario (Information and Privacy Commissioner)*, [1994] O.J. No. 2782 (Div. Ct.)

The *Acts* establish rules for the collection, retention, use, disclosure, security and disposal of personal information held by government organizations. Individuals who believe a government organization has failed to comply with the *Acts* may complain to the IPC. The IPC investigates the complaint, tries to mediate a solution and, depending on the findings, may make recommendations to the organization to revise its practices.

A few IPC investigations arise from appeals. That is, the IPC may decide to study an organization's procedures if problems come to light during an appeal proceeding.

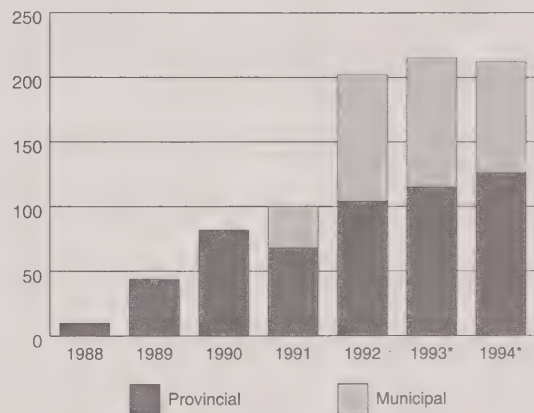
The IPC also ensures that certain targeted government organizations adhere to the legislation by conducting compliance reviews, which examine the organizations' information management practices. In addition, the IPC sometimes comments on specific problems or circumstances outside the context of an investigation or review.

As well, the IPC reviews and comments on the privacy considerations of computer matching proposals submitted by provincial government organizations.

Complaints Handled Efficiently

The IPC completed 212 investigations in 1994, a level virtually unchanged from 1993. The IPC found a breach of the legislation in nearly three out of 10 complaints investigated, again virtually the same as last year.

Number of Privacy Investigations Completed
1988-94



* includes 9 provincial investigations in 1993 and 11 in 1994 that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation

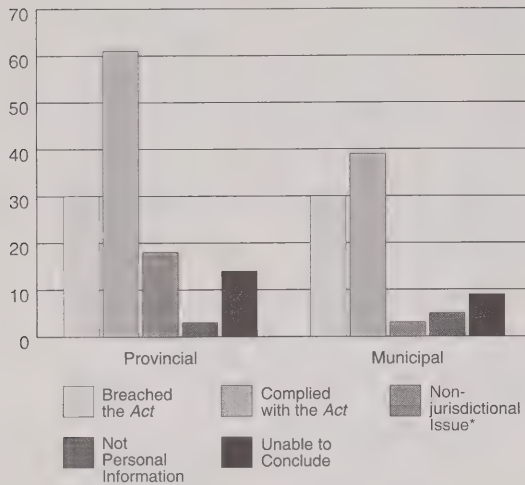
Summary of Privacy Investigations – 1994

	1993 Privacy Complaints		1993 Total	1994 Privacy Complaints		1994 Total
Carried Forward	20	34	54	32	15	47
Initiated	127*	81	208	123*	92	215
Completed	115*	100	215	126*	86	212
In Process	32	15	47	29	21	50

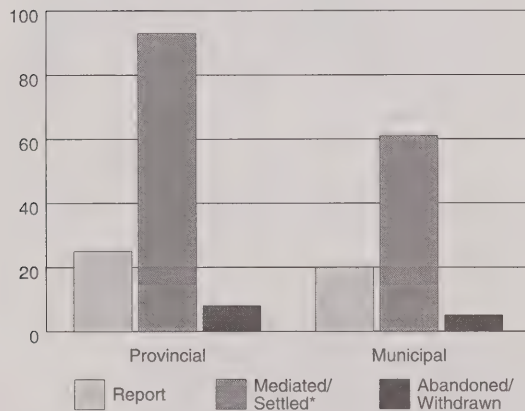
Municipal numbers appear in bold

* includes 9 provincial investigations in 1993 and 11 investigations in 1994 that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation

Privacy Investigations Completed by Outcome – 1994



Privacy Investigations Completed by Type of Resolution – 1994

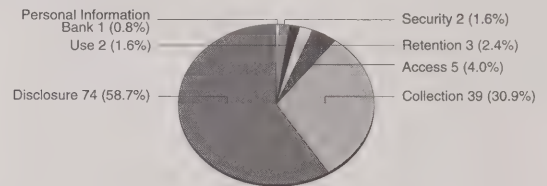


The IPC attempts to resolve privacy complaints without a formal report by encouraging mediation and voluntary settlement. This approach has led to significant resource savings and better customer service.

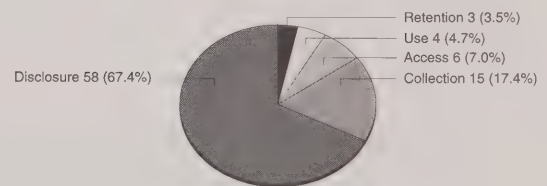
This year, a formal report was issued in only one in five cases, and more than two-thirds of complaints were settled voluntarily. The average time to complete an investigation launched in 1994 was only 1.9 months, maintaining the level achieved in 1993, compared with 5.8 months in 1992.⁷ As of December 1994, only 10 per cent of complaints in the system were more than four months old.

About six in 10 investigations completed this year concerned the disclosure of personal information. The next most frequent issue was collection of personal information, which accounted for one in four investigations.

Privacy Investigations Completed by Issue Provincial – 1994*



Privacy Investigations Completed by Issue Municipal – 1994

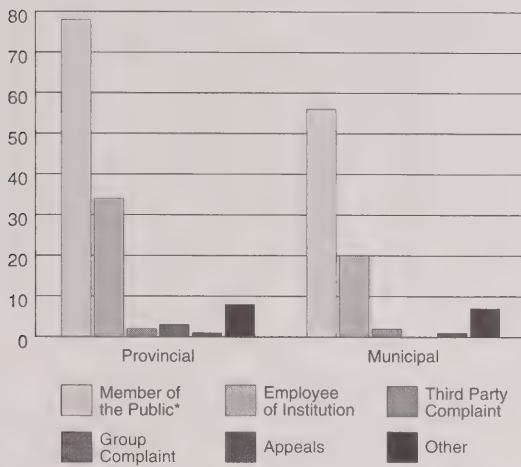


As in 1993, one-quarter of complaints investigated in 1994 were filed by an employee of the government organization involved.

* includes 11 provincial investigations that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation

⁷ The corresponding median time to complete an investigation launched in 1994 was 1.1 months — maintaining the level achieved in 1993.

Types of Complainants Involved in Privacy Investigations – 1994



* includes 11 provincial investigations that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation

ORAL COMPLAINTS RISE SHARPLY

In addition to investigating written complaints, the IPC also responds to privacy concerns or complaints communicated over the telephone. In 1994, the IPC resolved 288 oral privacy complaints, up 77 per cent from the 1993 level. The increase could indicate that more people are seeking quick, on-the-spot solutions as an alternative to formal procedures. In a number of cases the IPC contacted the government organization involved and brought the matter to their attention.

In all, combining written and oral totals, the IPC resolved 500 complaints in 1994.

IPC Investigation Highlights

Here are brief summaries of some of the major investigation reports issued by the IPC in response to privacy complaints received during 1994.

ADMINISTRATION OF SICK LEAVE

A separate school teacher on sick leave was required to sign two forms before she could return

to work — one authorizing the school board to collect a broad spectrum of her medical information from her physician; and another authorizing the board's physician to disclose the teacher's medical information to the board's assistant superintendent of personnel services.

The teacher signed the second form as it was, but revised the first to consent only to the collection of medical information relating to the specific reasons for her sick leave. The board accepted the revised form. The teacher complained that both forms were privacy-invasive and had been signed under coercion.

The IPC found that the collection of information relating to the reasons for the sick leave was necessary to the lawfully authorized activity of administering employee benefits. However, collection of a broad spectrum of health information, as proposed in the original form, was not necessary and would therefore have contravened the *Act*.

The IPC found that the indirect collection of the complainant's medical information from her physician was in technical compliance with the *Act* since she had given her consent. However, the IPC questioned how voluntary this consent had been since the complainant had been told she could not return to work unless she signed the form.

In addition, we found that the disclosure of the teacher's personal information by the board's physician to the assistant superintendent was in compliance with the *Act*. The information had been collected for the purpose of determining if the teacher was fit to return to work, and was disclosed for the intended purpose.

We recommended that the board amend its policies and practices in two ways:

- Employees should be permitted to obtain their medical information from their physicians and submit it directly to the board's physician themselves. This would eliminate the need for any indirect collection and the related consent form.
- Employees should be allowed to review and comment on the board physician's report before it is sent to personnel services, so they can object to the disclosure of any information they feel is irrelevant. (Investigation I94-001M)

HIV STATUS DISCLOSED UNNECESSARILY

A complainant was diagnosed as HIV-positive and advised by his doctor to get more help to care for his mother, who had suffered a stroke. The local municipality already provided some in-home support through a contract with a private company.

When the municipality denied the request for more help, the complainant decided to reveal his HIV status to the municipality. He was assured the information would not be passed on to the home care company without his consent. Later, however, he learned that the company had been informed of his condition by the municipality. He complained to the IPC that his privacy had been violated.

The municipality believed that there was a compelling health or safety reason for the disclosure, namely, to enable the home care company to take steps to protect its workers. The IPC, however, found that the company had no need to know the complainant's HIV status, since it already had a policy of using "universal precautions" as its standard procedure. Furthermore, the workers were caring not for the complainant, but for his mother.

The IPC recommended that the municipality include an explanation of the requirements of the *Act* regarding the disclosure of personal information in its staff training. (Investigation I94-042M)

WELFARE RECIPIENTS' PRIVACY VIOLATED

The complainant, a social assistance recipient, represented by a legal clinic, was involved in judicial review proceedings in Divisional Court with a city's social services administrator and the Social Assistance Review Board (SARB). Acting for the complainant, the legal clinic complained that the city had disclosed the names of 11 other welfare recipients to the city's solicitor, the complainant and others.

The IPC found that the disclosures fit none of the circumstances where the release of personal information is permitted under the *Act*. The city acknowledged the disclosure and indicated it had

taken steps to prevent similar incidents in the future. For example, it had advised the city administrator and solicitor of the breach of privacy, and distributed a copy of city policy on access to personal information to staff.

A second issue involved the complainant's concern that the solicitor intended to disclose personal information contained in a "request to admit" as evidence in the court proceeding at a later date. The solicitor had served the complainant and other interested parties with the "request to admit" which included information such as the names of the complaint and the 11 other social assistance recipients, SARB files numbers, dates of appeals, amounts of benefits and other data.

To prevent further disclosure in this case, the IPC contacted the city and suggested there might be alternatives to naming the 11 welfare recipients who were not parties to the court proceedings. The city acted quickly to substitute a revised version of the "request to admit" which did not list the welfare recipients by name. (Investigation I94-056M)

BIRTH REGISTRATION FORM CONFUSING

The complainant had been adopted at an early age and her surname had been officially changed to that of her adoptive parents. When she later had a child herself, she completed the required Statement of Live Birth. This form asked for the mother's surname at birth, but did not indicate that in the case of an adopted person, the surname being requested was the adoptive name. The complainant therefore listed her pre-adoptive name, which was keyed into the Ministry of Consumer and Commercial Relations' registration database as her maiden name.

Later, the complainant's husband applied to the Ministry for an extended birth certificate for the child, and gave the clerk his wife's maiden name, that is, her adoptive name. Without asking for identification, the clerk informed the husband that the maiden name listed on the birth registration was different, and told him what it was.

The complainant was concerned that her pre-adoptive name had been released without proper identification. She was also concerned about the accuracy of the Ministry's records, which listed her pre-adoptive name as her maiden name.

The IPC was unable to determine what, if any, security precautions the Ministry had taken prior to releasing the complainant's personal information to her husband. We noted that while the Ministry had defined and put in place reasonable procedures to prevent unauthorized access to records, those measures had not been documented as required by the regulations under the *Act*. We recommended that the Ministry correct this.

The Ministry was aware of the problem with the wording on the form. However, since the form was prescribed by legislation, changes would have to await the planned reform of the birth registration process. In the meantime, the next time the form was reprinted, the Ministry would include instructions on the back that adopted persons should give their adoptive name as their surname at birth. (Investigation I93-076P)

INFORMATION ON DAY CARE OPERATION

A day care operator entering into a purchase of service agreement with a municipality filed a complaint. He was required to complete a budget submission containing information about himself and his staff, including their projected salaries. He felt that the collection of this information was contrary to the *Act*.

The operator was also applying to the municipality for an exemption so he could employ an individual who did not meet the qualifications under the relevant legislation. The municipality requested supplementary documents to support the exemption, and again the operator was concerned that the collection of some of this information was contrary to the *Act*.

The IPC found that the collection of a detailed budget including the positions and projected salaries of staff was necessary to the proper administration of lawfully authorized activities —

namely, purchasing day care services and determining the expenditures needed for this purpose.

The IPC also found that the collection of supplementary information on the exemption request was necessary to provide day care services. The municipality had an obligation to ensure that the individual's qualifications met its operating standards. (Investigation I93-079M)

Following Up on Recommendations

An investigation report often contains recommendations to the government organization involved in a complaint for achieving compliance with the *Act*. Each year, the IPC follows up to ensure that its recommendations have been carried out. In 1994, the IPC followed up on 60 recommendations and is pleased to report that *all* had been implemented to its satisfaction.

Personal Information Collected Indirectly

Under the legislation, the Commissioner has the power in appropriate circumstances to authorize the indirect collection of personal information, that is, collection "otherwise than directly from the individual."

In 1994, the IPC processed nine applications for indirect collection and approved eight of them. Four of the approved applications pertained to Workplace Harassment Prevention Programs.

IPC Reviews Computer Matching Assessment

Computer matching refers to a computerized comparison of two or more databases of personal information originally collected for different purposes. The computer match creates or merges files on identifiable individuals to reveal matters of interest.

Computer matching by government organizations is intended to improve the efficiency of programs and services. This objective must be weighed against the dangers to privacy. To provide guidance on balancing these priorities in 1994, Management Board Secretariat (MBS) issued a directive, "Enhancing Privacy: Computer Matching of Personal Information."

The directive requires provincial government organizations planning a computer match to take certain steps to protect the privacy interests of individuals. One of these steps is to prepare a computer matching assessment, and provide the IPC with a copy of the assessment 45 days before the matching activity is to start. Both the assessment and the IPC's comments become public documents.

In 1994, the IPC received and commented on the first computer matching assessment — from the Ministry of Health, which proposed a computer match with the Quebec Ministry of Health to identify individuals potentially registered as eligible for health insurance in both provinces. These individuals will likely be contacted to ensure they are receiving benefits only from the province where they reside. If fraud is suspected, appropriate follow-up action will be taken.

The IPC examined the computer matching assessment and made three recommendations:

- The Ministry should update its directory of records to list a new databank of individuals registered for health insurance in both Ontario and Quebec.
- The business case for the computer match should provide more detail about the estimated costs of the matching activity. For example, the cost of verifying the information generated by a match should be broken down and an explanation provided of how the figures were reached. Without more detailed estimates, it will be extremely difficult to determine the true costs and benefits of the match at a later date.
- The assessment did not indicate the start date of the matching activity; this should be included in all assessments if at all possible.

Data Sharing

This year the Ministry of Community and Social Services asked the IPC to examine two proposed data sharing agreements, one with the province of Quebec and the other with the federal Unemployment Insurance Commission (UIC). The agreements were intended to permit the sharing of personal information in an effort to reduce fraud in the social assistance system.

Among several privacy concerns, the IPC urged that an individual be given a chance to refute information obtained from UIC before adverse action is taken on social assistance. The IPC also noted that the Quebec agreement contained no termination date or process for evaluating the effectiveness of the data sharing.

Government Actions Under Scrutiny

The IPC offers comment on the privacy implications of government actions and conducts reviews of government activity to ensure compliance with the *Acts*.

WRONG FAX NUMBER

Upon learning that a municipal police force had inadvertently faxed details of a murder investigation to an incorrect fax number, the IPC visited the force to review its fax procedures. We found that in the incident in question, the auto-dialing feature of the fax machine had been used. This feature involves entering phone numbers into the machine's memory for automatic dialing at the touch of a button.

Following the IPC's visit, the police force disabled the auto-dialing feature on all fax equipment and advised staff that personal information should rarely be faxed; courier or mail was preferable.

VERIFYING SOCIAL ASSISTANCE ELIGIBILITY

The Ministry of Community and Social Services introduced an Enhanced Verification Policy requiring sole-support parents receiving social assistance to verify their child's school attendance by having the school complete a form. The IPC met with Ministry staff and learned that this policy had always existed regarding children aged 16 and 17, but had been expanded to include all children.

We expressed misgivings about requiring parents to disclose to the school the fact that they were on social assistance. The Ministry acknowledged our concerns and decided not to expand the policy, keeping it only for 16 and 17 year-olds. Alternative proof of school attendance, such as the attendance record on a report card, will be acceptable for children under 16.

ORDERS SPARK REVIEWS

As a result of an IPC order resolving an appeal, the IPC undertook a review of a municipality's handling of job competition records. The IPC found that since the municipality did not have a formally documented job competition process, records were not being created and retained for the period required by the legislation. The IPC also noted that two types of records from the job competition process were not listed in the municipal by-law covering record retention.

Another order led to a review of disclosure practices at the Criminal Injuries Compensation Board, which had improperly disclosed a third party's personal information to a requester. The IPC gave the board six months to supply proof that it had reviewed its disclosure procedures and developed and implemented improvements to prevent similar occurrences.

Access and privacy concerns extend far beyond the public sector, and involve a wider social and economic debate. Part of the IPC's job is to conduct research and use the results to advance public discussion and recommend changes in legislation and government policy. The IPC also analyzes the practical challenges government organizations face in complying with the *Acts*, and advises on ways to improve their data protection and information management practices.

Rules of the Road for the Information Highway

The telephone, television and computer are converging rapidly, bringing closer the day when voice, video and data signals will be accessed through a single plug in the wall. The vast network of networks that enables multimedia communication has been referred to as the information highway, and its emergence generates a host of access and privacy implications.

Anticipating the need for some "rules of the road," the IPC developed a set of access and privacy principles for the information highway and submitted these principles to the Canadian Radio-television and Telecommunications Commission (CRTC) in response to a call for comments on information highway policy issues.

The IPC's views also appeared in a consultation paper produced by the Coalition for Public Information, a group of some 350 libraries, publishers, universities and other concerned parties. In addition, the privacy principles formed the basis for the IPC's response to Industry Canada's discussion paper, *Privacy and the Canadian Information Highway*.

The key ideas which underlie these principles include the following:

- Universal access should be the defining characteristic of the information highway, just as this value

has shaped our traditional communications systems. Everyone should have access to the information highway — without regard to such factors as income, location, language, disability or technical know-how.

- The right to personal privacy should be explicitly recognized by those who build, operate and use the information highway. This is fundamental to the viability of the highway itself — for if people doubt their privacy is secure when they use electronic networks, they may avoid using them.

- The impact on access and privacy should be weighed before any new information technology or service is introduced. Access and privacy features must be built into new systems at the design stage, not treated as an afterthought. Otherwise, damage to these traditional values of access and privacy may not become visible until it is too late or too costly for repair.

- Public education and training must be provided to make people aware of new information services and how to use them, and to alert users to potential privacy threats and how to avoid them.

- While many services on the information highway will be supplied on a commercial basis, access must be guaranteed to services of public value — such as educational programs or links between government and the public.

- The information highway should be covered by the internationally recognized code of fair information practices. Ontario's existing privacy legislation for provincial and municipal government organizations is based on these international standards concerning the collection, retention, use, disclosure and security of personal information.

- The information highway, at least initially, should not totally replace traditional means of communication. Not everyone is on-line, and non-electronic services should continue until demand for them disappears.

- Those who find privacy losses unacceptable should not be forced to accept them. Where new information technologies alter the privacy status quo, users should be able to preserve their existing levels of privacy at no extra cost.
- Violation of privacy should have consequences for the violator. A system should be established for handling complaints, imposing penalties and awarding damages for improper uses of personal information.

Sounding the Alarm on Electronic ID

As we go through the routine of daily life in our information society, each one of us leaves a data trail, such as records of telephone calls, bill payments, health services or insurance claims. One barrier preventing this information from becoming a tool of control is the fact that our personal data is currently stored using different methods of identification.

We have different IDs for different purposes — a health card number, a driver's licence number, a Social Insurance Number, bank numbers and so forth. However, if each of us had one unique all-purpose number, every transaction an individual made could be linked across hundreds of databases. Comprehensive profiles could be created at the push of a button. This year the IPC released a report on this critical issue, called *Privacy and Electronic Identification in the Information Age*.

All three levels of government — in their search for perceived efficiency increases, better customer service and reduction of fraud — have shown interest in new identification schemes, some featuring multi-purpose cards. The IPC fears that once a multi-purpose card based on a single identifying number has been developed for a few defined functions, the momentum to expand it to other uses could prove irreversible.

The electronic ID paper reasserts the IPC view that properly designed information systems can enhance privacy rather than undermine it. The key is to insist that the experts who develop and

manage systems find ways to make them compatible with privacy values beginning at the design stage. For example, the IPC cites “blind digital signatures” based on recent advances in encryption systems, as a way to verify a person's right to make a transaction, without revealing his or her identity.

In addition to publishing the paper, the IPC responded directly to provincial and municipal proposals and statements concerning new identification schemes for health care and welfare services and drivers' licences. The IPC remains convinced that the move toward centralized databases containing photos, signatures, fingerprints or DNA profiles — accompanied by a unique identifying number — is unnecessary and open to abuse. It paves the way for a surveillance society, however unintended.

Privacy in the Marketplace

Though Ontario's privacy legislation covers only government organizations, today's privacy issues know no such boundaries. During 1994 the IPC released two companion publications to guide consumers and businesses in the private sector: *Privacy Alert: A Consumer's Guide to Privacy in the Marketplace* and *Privacy Protection Makes Good Business Sense*.

Privacy Alert serves as a privacy awareness primer for consumers. It points out that consumers themselves often unwittingly contribute to their own loss of privacy by giving out their personal information — telephone number, address, occupation, income, age — that is not necessary for the transaction at hand.

The publication urges consumers to be informed about privacy issues, and provides a series of 18 tips on how to do it. It calls on consumers to take back control of their own information by being aware, exercising caution and asking questions about what happens to the information they are providing.

If consumers are increasingly worried about privacy — as polls indicate they are — it simply makes good business sense for market-driven companies to build privacy protection into their

routine operating procedures. The IPC business paper underlines that privacy protection is not in conflict with legitimate business needs to collect and use information. However, businesses must be sensitive to their customers' privacy.

In the paper, the IPC offers a series of best practices to foster this sensitivity. If customers understand why they are being asked to provide personal information, what will be done with it, and how they can express concerns, business will build customer loyalty.

Electronic Phone Book Problematic

When the CRTC invited comments on the possibility of providing the information in telephone directories in an electronic format, the IPC responded by raising two major concerns.

First, the IPC felt the sale or lease of customer information by telephone companies to third parties, without the consent of the individuals affected, would be inconsistent with fair information practices. Second, providing residential listing information in an electronic format has much more potential for abuse than does the current printed format. Once converted to electronic form, the data can be readily sorted and combined with other information and used for purposes such as telemarketing, which were not anticipated by the individuals who provided the information.

The IPC recommended that, if the CRTC decides to approve the proposal, the telephone companies involved should be required to:

- obtain the consent of the individuals to whom the information relates by having them explicitly opt in;
- include in contracts with third parties a requirement to use the information only for the purposes to which the individuals have consented; and
- inform the public about the privacy implications of releasing residential listing information to third parties in an electronic format.

E-Mail Security Measures

Electronic mail can be an effective tool to promote the exchange of ideas and information and increase productivity in the workplace. On the other hand, it has been observed that e-mail has the same security level as a postcard.

To heighten awareness, the IPC prepared the report, *Privacy Protection Principles for Electronic Mail Systems*, which contains guidelines for public and private sector organizations to use in developing their own customized policies on e-mail. Among IPC suggestions:

- privacy of e-mail should be respected and protected;
- each organization should formulate an explicit policy on e-mail privacy, and communicate it to users;
- users should receive training in security and privacy issues;
- e-mail should not be used to collect, use or disclose personal information without adequate safeguards; and
- organizations should develop security measures to protect the confidentiality of messages.

Fostering Open Government

Meeting the public's growing demand for information in a cost-effective manner is a continuing challenge for government organizations. To help meet this challenge, the IPC and Management Board Secretariat this year released the paper, *Routine Disclosure and Active Dissemination (RD/AD)*.

Routine disclosure occurs when a government organization automatically releases specific administrative and operational records in response to a request, either within or outside the formal access process. Active dissemination takes place when a government organization anticipates customer needs by periodically releasing useful general records without a request.

The paper presents a series of practices to help government organizations determine which records could be routinely disclosed or actively disseminated. These guidelines were developed with input from a working group of municipal and provincial government officials.

Not only do the RD/AD options mean better customer service, they can also save valuable resources. Offering established access to designated types of records is often less time-consuming and less costly than processing formal requests and appeals under the *Acts*. These alternatives are increasingly attractive in the current climate of fiscal restraint.

Committee Reviews Municipal Act

In January 1994, the IPC made a major submission, containing 53 recommendations, to the Standing Committee on the Legislative Assembly, as it began the required three-year review of the municipal *Act*. Since the municipal and provincial *Acts* form an integrated scheme, many of the IPC's proposals affected the provincial statute as well.

Foremost among the recommendations was a call to extend access and privacy legislation to hospitals, universities, social service agencies and professional governing bodies. These organizations perform significant public functions, in many cases receive substantial public funds, and often hold sensitive personal information.

After considering testimony and submissions from more than 55 institutions, groups and individuals, the Committee issued its report in December 1994.

The IPC has an ongoing public education program to raise awareness of access and privacy rights under the *Acts*, inform users of the IPC's procedures for dealing with appeals and complaints, and sensitize government organizations to their responsibilities under the legislation.

Support for Government Co-ordinators

In co-operation with Management Board Secretariat, during 1994 the IPC participated in 19 training sessions for Freedom of Information and Privacy Co-ordinators in municipal and provincial government organizations. The co-ordinators play a hands-on role in the day to day operation of the access and privacy system.

In another step to foster the co-ordinators' professional development, the IPC co-sponsored the annual fall workshop with Management Board Secretariat and the Association of Municipal Clerks and Treasurers of Ontario. This year's event, *Fast Forward: Access and Privacy Issues in the Information Age*, attracted more than 250 participants to two days of practical sessions featuring expert panels, workshops and round table discussions.

Educating the Public

In 1994, the IPC outreach efforts included a heavy schedule of speaking engagements and extensive media relations work.

Through the IPC Speakers' Bureau, the Commissioner, Assistant Commissioners and staff delivered 39 speeches across Ontario and in other jurisdictions. Speakers addressed such groups as the Canadian Bar Association, the Ontario Medical Association, the Canadian Public Relations Society, a seminar at the Kennedy School of Government at Harvard University, the Council on Governmental Ethics Laws, journalism classes at

Ryerson Polytechnic University and a public forum at the Burlington Public Library.

The IPC ran targeted province-wide media campaigns — including news releases, feature articles, speeches, and other materials — to promote four major initiatives: the IPC's submission to the legislative committee reviewing the municipal *Act*, and the release of three IPC reports:

- *Privacy Protection Principles for Electronic Mail Systems*
- *Privacy Alert: A Consumer's Guide to Privacy in the Marketplace*
- *Privacy Protection Makes Good Business Sense*

In all, the IPC responded to 142 media requests for further information and arranged 53 interviews with the Commissioner or IPC staff.

The IPC continued to distribute publications to government organizations covered by the *Acts*, as well as to the wider access and privacy community.

Perspectives, the IPC newsletter appeared three times this year to keep readers informed of IPC activities and to flag emerging issues. It has a circulation of about 3500 government organizations, business groups and interested individuals.

During 1994, the IPC also published eight issues of *Practices* for government organizations and users of the appeal and complaint systems. These concise guides offered practical advice on such procedural themes as "Increasing the Effectiveness of Representations," "Clarifying Access Requests," and "How to Protect Personal Information in the Custody of a Third Party."

In addition, three brochures on the IPC and pocket guides to the *Acts* remained popular. In all, the IPC provided more than 17 500 information pieces in response to requests from government organizations and members of the public during 1994.

As part of outreach efforts, the IPC also offers province-wide information services through a toll-free telephone line. During 1994, the IPC responded to almost 5000 access and privacy information calls.

FINANCIAL STATEMENT

**Statement of Expenditure for
the year ended March 31, 1995****1994-95
\$****1993-94
\$**

Salaries and wages	5,455,615	5,455,199
Employee benefits	628,500	906,057
Transportation and communication	111,507	116,919
Services	934,158	1,121,528
Supplies and equipment	316,630	477,252
Total Expenditures	7,446,410	8,076,955

The figures for the period ending March 31, 1995 are unaudited. For a copy of the Provincial Auditor's report please contact the IPC Communications department at 416-326-3952 or 1-800-387-0073; TTY (Teletypewriter) 416-325-7539.

Approved:



Information and Privacy Commissioner

